

Assembly Bill No. 2149

CHAPTER 476

An act to add Section 25243.5 to the Corporations Code, relating to securities.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2149, Berg. Broker-dealers and investment advisers.

Existing law, the Corporate Securities Law of 1968, provides for the certification and regulation, by the Commissioner of Corporations, of broker-dealers and investment advisers. Existing law also provides for the regulation of broker-dealer agents and investment adviser representatives. Existing law makes it unlawful for an investment adviser to, among other things, defraud or engage in any transaction that operates as a fraud or deceit upon any client or prospective client, or represent that he or she is an investment counsel or to use the name "investment counsel" unless certain requirements have been met. Existing law also makes it unlawful for a broker-dealer or investment adviser to represent or imply that he or she has been sponsored, recommended or approved by the commissioner, except as specified. Under existing law, a violation of these provisions is a crime and a violator is subject to specified penalties.

This bill would prohibit a broker-dealer or investment adviser, or an agent or representative thereof, except as specified, from using a senior-specific certification, credential, or professional designation indicating or implying that he or she has a special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person. The bill would make these provisions operative on July 1, 2009.

Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 25243.5 is added to the Corporations Code, to read:

25243.5. (a) A broker-dealer or investment adviser, or an agent or representative thereof, shall not use a senior-specific certification, credential, or professional designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the broker-dealer, investment adviser, or an agent or representative thereof, has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person.

(b) The prohibited use of these certifications, credentials, or professional designations includes, but is not limited to, the following:

(1) The use of a certification, credential, or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification, credential, or designation.

(2) The use of a nonexistent or self-conferred certification, credential, or professional designation.

(3) The use of a certification, credential, or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, credential, or professional designation does not have.

(4) The use of a certification, credential, or professional designation that was obtained from a designating, credentialing, or certifying organization where any of the following apply:

(A) The organization is primarily engaged in the business of instruction in sales marketing.

(B) The organization does not have reasonable standards or procedures for assuring the competency of individuals to whom it grants a certification, credential, or professional designation.

(C) The organization does not have reasonable standards or procedures for monitoring and disciplining individuals with a certification, credential, or professional designation for improper or unethical conduct.

(D) The organization does not have reasonable continuing education requirements for individuals with a certification, credential, or professional designation in order to maintain the certificate, credential, or professional designation.

(c) There is a rebuttable presumption that a designating, credentialing, or certifying organization is not disqualified solely for the purposes of paragraph (4) of subdivision (b) when the organization has been accredited by the American National Standards Institute, the National Commission for Certifying Agencies, or an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the certification, credential, or professional designation issued therefrom does not primarily apply to sales and/or marketing.

(d) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification, credential,

or professional designation indicating or implying that a person has special certification or training in advising or serving senior citizens or retirees, factors to be considered shall include both of the following:

(1) Use of one or more word such as “senior,” “retirement,” “elder,” or like words combined with one or more words such as “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification, credential, or professional designation or credential.

(2) The manner in which those words are combined.

(e) This section shall not apply to the use of a job title by a person within an organization that is licensed or registered by the Department of Corporations or a federal financial services regulatory agency, when that job title indicates seniority or standing within the organization, or specifies a person’s area of specialization within the organization. For the purposes of this subdivision, federal financial services regulatory agency includes, but is not limited to, an agency that regulates brokers or dealers, investment advisers, or investment companies as described under the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1 et seq.).

(f) (1) This section shall not apply to a broker or agent who is licensed by the Department of Insurance and is in compliance with the requirements of Section 787.1 of the Insurance Code.

(2) This subdivision shall be operative only if Assembly Bill 2150 of the 2007–08 Regular Session is chaptered and becomes effective and that bill adds Section 787.1 to the Insurance Code.

(g) This section shall become operative on July 1, 2009.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.